

CALIFORNIA ACUPUNCTURE BOARD

1424 Howe Avenue, Suite 37, Sacramento, CA 95825-3233
Phone: (800) 952-5210 / (916) 263-2680 / Fax: (916) 263-2654
E-mail: acupuncture@dca.ca.gov Web: www.acupuncture.ca.gov

State of California
Department of Consumer Affairs
Gray Davis, Governor



(Approved)
ACUPUNCTURE BOARD
May 13, 2002
Ronald Reagan Building
300 S. Spring Street
Los Angeles, Ca.

FULL BOARD
12:00 PM – 5:00 PM

MEMBERS PRESENT

Pei Li Zhong-Fong, L.Ac., Chair
Michael Eng, Vice Chair
Shari Asplund
Howard Moffet, L.Ac.
Min M. Chang

STAFF PRESENT

Marilyn Nielsen, Executive Officer
Don Chang, Legal Counsel
Janelle Wedge, Administrative Coordinator
Nancy Molinar, Education Coordinator
Helen Gathercole, Administrative Technician

MEMBERS ABSENT

Joan Chang, L.Ac.
Justin Tin, DDS

GUEST LIST ON FILE

1. Call to Order and Establishment of a Quorum

Chair Pei Li Zhong-Fong called the Acupuncture Board meeting to order at approximately 12:25p.m. Roll was taken and a quorum established.

2. CLOSED SESSION: Pursuant to Government Code Section 11126(c)(3) to discuss/take action on disciplinary actions.

3. Ms. Zhong-Fong introduced Lynn Morris, Deputy Director, Department of Consumer Affairs Board Relations and Kristin Triepke, Senior Consultant to the Senate Business and Professions Committee and asked if they would like to make a comment. Ms. Morris indicated she is here to visit, listen and learn what the Board is doing. Ms. Triepke indicated she is here to answer any questions and clarify any misunderstandings regarding the sunset review process or SB 1951. Ms. Zhong-Fong asked the audience if there were any other special guests and if they would stand and introduced themselves. Denise Ng, Field Representative and Roland Arango, District Director from Assemblywoman Judy Chu's Office introduced themselves.

4. Sunset Review – Joint Legislative Sunset Review Committee Final Recommendations and Action Taken

Ms. Zhong-Fong asked Ms. Nielsen to update the Board members. Ms. Nielsen reported since the March Board meeting she attended a meeting on March 21, 2002 with Senate B&P consultants Kristin Triepke, Bill Gage and Robin Hartley and Assembly B&P Principal Consultant David Pacheco, to discuss sunset review issues and recommendations. The Department's recommendations were publicly released on April 4, 2002 and the Joint Committee's "final recommendations" were released late April 5, 2002. She said the April 10, 2002 hearing with

the Joint Committee to discuss their final recommendations went very well and that Michael Eng, Vice-Chair also attended the hearing. She reported there were basically two recommendations that were of concern that she and Mr. Eng testified at the April 10 hearing. First, the two-year short term of the sunrise, considering the number of action items the Joint Committee recommended. Second, the recommendations contained six action issues (i.e., #9, 10, 11, 12, 13 and 14), one of which, #9 was to be performed by a consultant, #10 by the Department's Office of Examination Resources, and four, #'s 11, 12, 13, and 14, to be performed by the Board, with reports required at the next review. We testified that the Board was concerned about the financial impact of recommendation #9 that required an independent consultant to determine the profession's educational requirements and scope of practice, also that the Department would be responsible for retaining and overseeing the consultant. However, SB 1951 was amended on May 2 expanding the requirements of the independent consultant to review the scope of practice, educational requirements, evaluate the national exam and school approval process. The Department would have total control over selection of the consultant. Ms. Nielsen feels if the Board is paying for the consultant, the Board should have joint control of consultant selection and oversight. Ms. Nielsen expressed concern that as of the April 10 hearing the Board had not heard whether or not the Joint Committee was going to carry the Board's enforcement legislative proposals in SB 1951, submitted to the Joint Committee in the Board's September 2001 report. Ms. Triepke has assured Ms. Nielsen that there should be no problem getting the Legislative Proposal amended into SB 1951. Ms. Nielsen had concerns about comments made by Senator Figueroa at the May 1 "vote only" hearing. Senator Figueroa, Chair of the Joint Committee implied that the Acupuncture Board is doing everything to circumvent the authority of the Joint Committee and sunset process. The Joint Committee is taking this very seriously and the Board came close to not being a board. Ms. Nielsen conveyed that the Board has been working closely with the Department and Joint Committee and didn't understand the Senator's statement. Ms. Zhong-Fong stated the Board has had a firm commitment for cooperating to finalize the recommendations and work together with the Joint Committee and the Department. Mr. Eng wanted to make a point of clarification to the recommendation/action items. Ms. Nielsen noted the discussion was overlapping to agenda item 7(b) Sunrise Legislation SB 1951 and suggested taking the bill out of sequence. Ms. Asplund inquired why the Joint Committee feels the Board has not been cooperative?

Ms. Zhong-Fong suggested proceeding to agenda 7 (b) for further discussion on SB 1951; the Board approved the agenda change.

5. SB 1951 (Figueroa) – Acupuncture Board's Sunrise Legislation

The Board opened the discussion asking Ms. Triepke to clarify the comments made by Senator Figueroa at the May 1, 2002 Joint Committee hearing, where she said that the Board has done everything to circumvent the sunset review process. Ms. Triepke stated she believes Senator Figueroa's comments were not necessarily or specifically with the Acupuncture Board, nor specifically on the issue of the review by the Joint Committee, and thinks it's a historical problem, and a historical lack of responsiveness by the Board failing to address the key and necessary issues. For example, as a staff person who reviewed the sunset report for the Acupuncture Board, one of the areas Ms. Triepke looked at was the agenda. She said she went back through a couple of years, reviewed what was on the agenda, looked at the minutes, and indicated it's the same issue time and time again. There are certain things that the Legislature through Business and Professional Code has authorized the Board to decide, for example, school approval process is one of those things, or examination. Recognition of acupuncture in California in comparison to most other states is much further ahead. However, when reviewing cross cutting issues with the boards, the Joint Committee reviews issues of reciprocity and compares where the boards in California are in comparison to others. They assess the Board adequately addressing the educational and examination requirements, which are typically the two requirements to ensure entry-level competencies. The question was, the last time the Board was reviewed in 1996-97, compared to this year now is there a way to utilize a national exam and the national accreditation body for California processes? In part, it is an issue of reciprocity, and in part an issue of alleviating the Board of duties that are necessary, it doesn't mean losing the total authority. The Board would recognize an examination or a couple of different examinations or a couple of different accreditation bodies. Ms. Triepke indicated this is something the Board would not have to do alone. Again, that was part of the review in 1996 and has been on the agenda dated back and nothing has been decided. Recognizing that the Board members have changed it is understandable, but the intent of the Joint Committee is that it is the duty given to the Board to look at the pros and cons and make a decision. It may not always be the easiest to make a decision, but a decision needs to be made. And that is why in

part the Joint Committee decided upon a two-year review, if the Joint Committee didn't give a specific time frame the concern is that the Board would come back in four years and still not have made a decision. Additionally the idea of an independent consultant has been used for other boards and to relieve the Board, since one of the concerns was staff and how the impact would be on staff, by picking somebody from the outside world, doesn't take up staff time. Also look at the language of SB 1951, the Board is in there, so it is the Department in conjunction with the Board and Joint Committee, the Board was not left out, the language as far as the recommendation, but it is in the bill. At some point, you want to make a decision and move on, and the two year plan is a goal, if it can get done sooner than two years that is great, and that is the reason why not to push it out further which typically it's a four year cycle where boards are reviewed. Ms. Triepke thinks there has been some concern with this Board that things needed to be decided sooner rather than later for the benefit of everyone. This is what the two-year plan is about, to look at the pros and cons and make a decision. Senator Figueroa, Chair of the Joint Committee has had hearings on alternative medicine and has been very supportive of alternative medicine, particularly acupuncture. Ms. Triepke explained, it had nothing to do with liking or disliking the Board, the Joint Committee believes it's a fabulous profession, this is the recognition of it. Senator Figueroa has requested these issues get figured out and move forward rather than discussing the same issues time and time again. Personally Ms. Triepke stated, maybe it was a benefit being relatively new to this as an outsider, the issues didn't seem to be too difficult. She recognizes the Board meets only four times in the year, and doesn't get to spend all day every day on this, as she has, since last September. She pointed out, it is not to let national people control, the Board will still control, and the legislature will still have control, but rather where appropriate and alleviate the Board of jobs to free up staff time. This seems to be the case; all but two schools agree on it and go back to the example, as far as the national accreditation and the Boards approval, but only two schools agree on the current process. That is the goal and the point. On behalf of the Senator, Ms. Triepke stated, that the personal frustration was after putting the recommendations out there the Joint Committee was in hopes that the Board could see what the Senator was seeing. But, the response was the Board could not do this in two years and instead it should have been, we will work with you, embrace it and work with it. Ms. Triepke states the Board should work with the Joint Committee and turn this around sooner than later so they could move on. The thought that the Board might have been cooperative but wasn't and that was frustrating; the plan was not embraced. Recognizing on some level, as well, a two-year plan was a compromise approach rather than no years. Maybe the Board isn't familiar with last year, the Joint Committee decided to reconstitute the Dental Board and this year the Board of Optometry. Finding that too many levels of problems exist and it was better to eliminate everyone and start new. The Joint Committee does not feel this is the case for this Board, however, the Joint Committee is trying to send a clear signal, to move forward and that's what the two years are about. The Board now will have only two jobs now, one is to deal with acupuncturist use of assistants and the other is to deal with the continuing education. Ms. Triepke explained, there was one other that the committee has given, it was the exams and now has placed that into the independent consultant. She recognizes that the Board is smaller and they don't have many staff members as other boards have. Ms. Nielsen noted that the Board's written response to the Joint Committee expressed the concern for the four recommendations the Board was responsible for and was based only on the final recommendations. She had not seen the revisions to SB 1951 the bill came after the fact. In the April final recommendations, only one recommendation #9 was noted for a consultant, and OER #10 and #11-14 the Board's responsibility. Ms. Nielsen indicated that is why the two-year re-review was of concern to the Board. The Board supports the review and evaluation of the recommendations, but was concerned if the review could be done well in the time frame designated. Ms. Triepke explained that the point is, the report component is not to bog the Board down with some fancy, flashy report, that these issues have been around and reviewed for awhile, just sift through it and make a decision. Ms. Triepke indicated that briefly, continuing education was discussed at the last meeting and the thought is and she was not sure of how the Board operates, and she recognizes that, but this is not a full time job for the Board. But this issue had a current list that has been approved, she recommends to go through it and mark anything that looks questionable, and indicated that some things don't seem as they might appear. One in particular, "How to make \$100 K in Acupuncture", maybe this is a little misleading and this doesn't sound like an approved continuing education course. Ms. Nielsen responded, by explaining a brief description of the Board approval process and this course in detail, which covered practice management as a small business in acupuncture. Ms. Triepke, in her opinion which differs from the Board's opinion, she thought it was inappropriate to approve a continuing education course which complied with the 30 hour renewal requirements on how to run an office and that the licensee would get credit for this type of class. Ms. Triepke stated the approval process needs to be reviewed and whether or not the Board could alleviate some of the staff having to go through the same course every time.

Maybe recognizing that's not a relief on their part, but enough that they could implement auditing and maintain some consistencies with the auditing. Ms. Triepke found in general of the regulatory boards and bureaus, that the practitioners knew what they can get away with and they are being watched and audited. Make clear to the practitioner that the Board is checking and it is important that it is a meaningful compliance. Ms. Triepke questioned of the approved courses what part of those actually have to go to a live person versus on video tape or Internet, in her opinion felt this was equal, if that was the case this was fine. It isn't something that needs to be hours and hours doing, just simply touch upon those things. The Joint Committee did the research and compared similar situations with other boards. The bottom line is to have a comfort level and if the Board feels comfortable with the CE program, it would be a reasonable response to the Joint Committee. Again, don't need a fancy report, the Joint Committee has gone through all those issues and that is what was found. The Board does not have to wait to make changes. Ms. Triepke indicated regarding unlicensed activity just get the word out to the people, use the web page and that the Board is looking for any information on unlicensed practice. Ms. Nielsen assured the Joint Committee that the Board has been actively processing information in regards to this issue. Ms. Triepke asked the Board to decide what or if there is a problem and act accordingly and expressed concern that the Board needs to send a clear message to the practice and public that it isn't an issue of ignorance of the law and what will be done about it. Ms. Triepke said that these are the two issues that the Joint Committee has asked the Board to take care of, if it isn't too difficult. As this progress goes through the process and the Board believes these are decent proposals, the Board does not have to wait for SB 1951 to be signed by the Governor to do these things. This can be completed by the end of the year. Mr. Eng asked Ms. Triepke, was it true the Board is supposed to be sunsetted? Ms. Triepke replied, no, it will be extended for two years and can not guarantee this, but it is the recommendation in SB 1951, which is the vehicle for all the legislative recommendations. Mr. Eng stated the Board is at ease and open to the legislation process, that it is felt the Joint Committee has the best intention, and that the Board will work to further protect the public, and will work with the Joint Committee to do so one hundred percent. However, he feels the Board members have acted responsibly, having set up extra meetings and members never missing those meetings. A quorum has always been achieved showing diligence in their efforts. Mr. Eng indicated the Board is in a different category, and most of the members only served less than a year and a half and inherited several controversial issues. Mr. Eng stated the Board went for a year only having three members and those members showed their dedication, that the Board has done remarkably well under the circumstances. Mr. Eng indicated that in regards to the Board's April 9 letter, the Board has exhibited the spirit of cooperation and a willingness to work with Joint Committee. For example, recommendation #1 the legislative review process and a two year re-review is a legitimate concern; recommendation #9, where the Board is expected to bear the cost and with no defined budget is also of concern. He thought recommendation #6 was a fair statement, and as for recommendation #9, what is appropriate and what is the Board's final responsibility and lastly regarding the Board's enforcement legislation proposals, the Board was only requesting clarification. Mr. Eng expressed that he would work together with Joint Committee and wants to do a good job. Ms. Triepke explained any time a board comes up for review, she must use the appropriate representing role: such as a student, licensee, or consumer. She has gone through this since September and talked with many people whom fit these roles and her impression was that the Board isn't always working for that, which is part of the Board's inability for whatever reason to make a decision and to move forward, and with the constant changes, the Board keeps going back and forth, for better or worst, like with the examination issue. Every time the Board makes a decision it impacts people's lives. Ms. Triepke indicated when she performs such a review she takes this very seriously. If the Board sets back and does nothing it's going to hurt people in general, people who are applying for examinations or trying to get into schools, they will be impacted by the Board failing to act. The response should be "how do we make this work and what is it that this Board needs to do to make it work"? She considers this possible, but thinks the Board is years behind on some of these decisions, in particular the school approval process. She urged the Board to come up with some ideas. The Board has the money and should be the Board's money whether it's an independent consultant or not. The only reason there is an independent consultant issue is because the Board can't make a decision. Ms. Zhong-Fong stated that the Board will work together with Joint Committee. Ms. Triepke requested the Department educate the newer Board members and share any information that would be helpful. Ms. Triepke explained she has committed to the two-year project, because she believes in the process and the profession and wants to make the Board better. Ms. Asplund indicated that the national exams were not really something the Board was looking into. Ms. Nielsen explained that following the last sunset review process, per a recommendation by the Joint Committee, the Board and Dr. Hertz, Manager of the Department's Office of Examination Resources evaluated the national exams and even observed its administration. Dr. Hertz shared

concerns about security in the administration, and even of greater importance and concern is with the varying licensing standards that exist across this country that the national exam is a certification exam and doesn't hold the same purpose as a licensing exam. In addition, he was concerned that an applicant can qualify for pre-graduation eligibility having completed only 1,725 hours of their educational training or in their second year of school. The fee for the national exam is also considerably higher than the cost for the California exam. The Board performed the evaluation and decided that with the security issues, the impact to the public, and that the national would allow students to sit for their exam with only two years of education, that the California candidate was best served if the Board maintained California's quality exam developed by the Office of Examination Resources and chose not to pursue the national exam process. The Board's concerns have been shared with the executive director of the NCCAOM. Ms. Zhong-Fong explained that the exam should not be administered to candidates in the first 2 years of education and is not based on the occupational analysis of the practice of the California practitioner. Ms. Nielsen indicated the principle requirements or position of OER have not changed. Ms. Triepke questioned whether there was a way to modifying the national exam to meet the California standards, including not allowing the candidate to apply until they have graduated and requesting a reasonable fee for the exam. Ms. Nielsen reminded Ms. Triepke that the Joint Committee did challenge and ask those same questions of representatives of the NCCAOM at the December 6, 2001 hearings. NCCAOM's representative indicated they would discuss these questions with their board of directors and get back to the Joint Committee. The Board is unclear as to whether NCCAOM has ever responded to the Joint Committee and if so what was their response. Ms. Nielsen indicated that the Board chose to focus on its own exams and not an outside source. Mr. Moffet thanked Ms. Triepke and appreciated the opportunity to address the issues and understands the message the Joint Committee was relaying to the Board and this is an acknowledgment to be cooperative. Mr. Moffet asked if an invitation was issued to the Joint Committee to attend this Board meeting, and Ms. Triepke replied that she received a notice and responded, yes by mail and e-mail from Ms. Nielsen and she replied to the Board that she would be representing the Joint Committee and Senator Figueroa would have attended if it was not for prior scheduled committee hearings. Mr. Moffet had concerns that from the Board's last sunset review that it sounded like from Ms. Triepke, there might be issues that had not been followed up on. Ms. Triepke responded the issues from the last sunset review were not resolved and it has become a historical issue. Suggestions were made to eliminate the Board members, but Ms. Triepke believes it is best to work together, even if the suggestions indicated that the Board was not responsive to last reviews issues. These issues surfaced in the current review and recommendations and are not a benefit to herself or the Joint Committee, however her position is to work with this Board for the future, but because the recommendations had not been embraced it has been disturbing to the Joint Committee. Ms. Triepke stated the Joint Committee is here to make the Board better for the consumers and licensees. Ms. Nielsen replied the Board did respond to all the recommendations from the 1996/1997 review and the Board reviewed, evaluated and made determinations on all the issues. Mr. Moffet asked if there was another bill in the legislative process that is in contrast to or inconsistent with the current legislation and if so what can be done? Ms. Triepke responded, she believes that this might be the first time this has ever happened and that Senator Figueroa, which sets as Chair to both the Joint Committee and Senate B&P is of the opinion that the two bills are conflicting. However, Ms. Triepke believes it's a question of what is the process and an issue of being bogged down with hours and that the Joint Committee questioned what was the appropriate process and the focus should be on the quality of the schools and instructors. Also, a provision of the B&P Code requires the Board to determine the standards of the faculty of the schools and she believes that this has not been done. Ms. Triepke stated that it should be quality verses quantity, making sure the school has been given approval and the instructors are adequately teaching before the hours are increased. This is the vision of the proposal, take a step back, look at the process, where is the scope of practice, match up to the curriculum and exams, what schools have been approved, where are the schools relative to the appropriate curriculum. Ms. Triepke stated that the Board recognizes the request and has been working on these issues for a long time and the question is, which is the proper order of things? This bill is sending the recommendations to the Board. It is not that the Joint Committee disagrees with the curriculum hours, it is the order of things. Mr. Moffet asked if there is a bill conflicting with this issue? Ms. Triepke explained yes, AB 1943. Mr. Moffet stated that AB 1943 has been around before SB 1951. Ms. Triepke replied, because of the legislature deadlines to introduce bills and this bill was introduced February 2002 as a blank version to continue to go through the process and be amended when necessary. Once the Joint Committee voted the final recommendations on May 1 they were amended into SB 1951. Mr. Moffet had concerns that the Board is going to be placed into a squeeze play position between AB 1943 and SB 1951. Ms. Triepke expressed that lots of things have been said and a lot are inaccurate, however this is the process which has been in place for a number of

years and it is the view of the Chair of the Joint Committee that the bills conflict, but it's the process. Mr. Moffet asked, would the President of the Senate sign on? Ms. Triepke replied here is the scope and here are the equivalent hours to ensure that there is an adequate prepared entry-level practitioner. Ms. Triepke had a number of conversations with people and was not getting the impression that the hours were intended to be an entry-level requirement. In reference to the Board of Accountancy, where the goal was to force each state to accept the appropriate entry-level for accountants, the Joint Committee questioned the extra hours they wanted and whether it was an unnecessary requirement. Ms. Triepke explained that the Joint Committee plays the part of the devil's advocate, to justify every single hour, because it is an impact on people's lives, such as extra time in school, money and stress. She suggested being careful and justifying everything, instead of compromising. Ms. Triepke indicated that this Board and the Legislature would not be behold to any national interest, but ask if there is anything out there equivalent to what is being done. The Joint Committee recognizes that the Board is small and they are not in favor of smaller boards, because the lack of monetary and staff resources, being responsible for issues such as the examination, approving schools and defining the scope of practice, these are all time consuming. This is an attempt to make the Board better and not give a reason to say that the Board can not make it on their own or that it should be a bureau or pushed into another board that encompasses other professions. The Joint Committee has recognized the issues that have been difficult for the Board and the Legislature and wants to work with the Board to help them get through these issues and move forward, but changes need to have realistic standards and justifications. Mr. Moffet questioned, what happens if the Board gets sunset? Ms. Triepke responded there are several options: (1) a board can be reconstituted, meaning everyone will be gone and no one can be reappointed; (2) a board becomes a bureau within the Department of Consumer Affairs; or (3) becomes a program within the Department. Mr. Moffet asked, do you have anyone who is advocating the sunset of the Board? Ms. Triepke replied that she did not know of anyone who is actively doing so. Mr. Eng questioned, if SB 1951 is not a law as of now, can it be amended and is it the official position of the Joint Committee that this Board cannot take any position on these four issues or on bills relating to these four issues until September 2004, and this Board should not pass any motions or comment on any bills that relates to the scope of practice, education approval, national exams or school approval process until September 2004? He added is this the official position of the Joint Committee? Ms. Triepke answered, she did not have the answer and was only a staff person not a member of the Senate, however, the answer as a generalization or personal interpretation is, yes, the request would be to wait because of the belief the Board, based on history, has been incapable of coming to a conclusion on these important issues. Therefore the Joint Committee feels it is necessary to bring in the assistance of an independent person to come up with these solutions. And during that time period determinations are not to be made on those issues by the Board and this is a personal interpretation, however, she thinks Senator Figueroa would also say so, and acknowledges her response would be the same if asked by her boss. Mr. Eng asked is there an official position from the Joint Committee that this Board can not take position(s) on these issues? Ms. Triepke responded that this was the case and based upon the Joint Committee, which in part the independent consultant concept comes from and this isn't the first time that this Joint Committee or the Senate B&P has suggested the use of an independent consultant, and yes, during that time period the Board doesn't act on these issues. Mr. Eng asked if the Board is expected to make recommendations would this be an inappropriate action? Mr. Triepke replied if the Board took a position on an issue, her opinion is it is in direct conflict, however, it would be up to the Board. The Board needs to determine what is the proper process and according to the Joint Committee this is not the proper process. Mr. Eng stated SB 1951 is relatively new, in terms of what this Board has been in the process of doing. Ms. Triepke indicated that the Chair of the Joint Committee is very aware of SB 1943 and believes it is inconsistent, which is also the position of the Chair of the Senate B&P and the Chair of the Health Committee, as well as some of the other members. Mr. Eng indicated to Ms. Triepke that is it a policy issue and Ms. Triepke said that, yes it is. Mr. Eng stated that could we agree to disagree and still come to the table in good faith. Mr. Eng asked, if this Board takes a position on one of these four issues is the Board going to be sunset? Ms. Triepke restated Mr. Eng's question, if the Board takes a position on one of those four issues would the Joint Committee sunset them, she followed with, the answer would be no. In her opinion, it would be retaliatory, we are looking at a peer policy and not politics, and they are not out to get the Board or licensees, but here to help the public and the profession. Ms. Triepke indicated that she has spent a lot of time on this and states that the Joint Committee is here to help the Board and is not sure if this is being conveyed to the Board clearly enough and assures the Board these decisions have been made to help them. The only reason the Joint Committee made the recommendations is because it hasn't been decided or resolved in the past. The Joint Committee is giving a clear timeline to say get it done, get it over with, and move on to more important things. Mr. Eng indicated that because the threat of the Board being

sunset is not on the table, he asked the Joint Committee to work with them. Ms. Triepke replied that it is on the table, but not on her table, and that she is not a member of the Joint Committee and does not vote. She only provides the information and makes recommendations to her boss. She believes sunseting a board is not beneficial and should be reserved for those boards who are incompetent and are not doing their job. The Joint Committee recognizes the Board is relatively new and is giving you the chance to become familiar and make decisions. Rather than stating that the Board hasn't done their job, this might be contributed to the past Boards. Ms. Triepke said that the Joint Committee is trying to be very thoughtful and if the Joint Committee wanted to eliminate the Board it would have been done, which has been done to other boards before.

Public Comment: Brian Fennen, CAOMA, indicated that he wanted to point out that in the 1998 sunset review process it basically directed the Board to do two things: (1) To regulate herbalists, and recommend; evaluate the problem with other professions and oversight by other Federal, States and agencies. And this was adopted by Joint Committee 6-0; and (2) national exams, believes the Acupuncture Committee should continue to evaluate the national exam, again this was passed by the Joint Committee 6-0. This has been the most active directive that the Joint Committee has asked in the four years in the sunset review process. Mr. Fennen stated that the national exam was not adapted to the profession and not sequential as other medical professions would have and hopefully this profession will be able to some day. The oversight of this exam was taken from the Board and given to the Office of Examination Resources to develop and he believes that the Department and Office of Examination Resources should continue to do this process. Currently the National Certification Commission of Acupuncture Oriental Medicine (NCCAOM) is doing an occupational survey, resulting from comments from their November meeting. If NCCAOM is including the request to have California consider using their exam then they need to survey more Californians. The California exam is more comprehensive than the national scope. Mr. Fennen believes the Board should continue to monitor, regardless of an independent consultant. Regarding public appearance of things, in the opinion of Senator Figueroa the Board has been uncooperative, there has been no evidence of that. He was at the December 6, sunset hearing and each issue were approached until it reached issue 17 or 18 and went into public comment. Issue by issue was not gone over with the Board. Mr. Fennen stated that Senator Figueroa has been hunting for the boards this year and is upset with the Governor not making reappointments. Mr. Fennen indicated that he was receiving mixed messages from statements from public and private sources on what the Joint Committee will do. The question keeps surfacing about quality versus quantity, however even ACAOM is adding 500 more hours to their current standards. Hours shouldn't be added unless existing hours are maximized out on quality. CAOMA agrees with parts of SB 1951 and will recommend modifying others. He will be writing a follow up opinion on SB 1951, will take a position, and will be testifying and asking for some amendments on the bill. Mathew Bauer, L.Ac., stated he has been in private practice for sixteen years, makes an effort to stay informed of all the issues regarding the profession. Mr. Bauer appreciates the Boards concerns for SB1951 and for the independent consultant and believes they are valid questions and he believes it is very important to work out these issues and resolve them with communication and cooperation from the Board, the profession and governing bodies. The Board has his full support and encourages the Board because if the cooperation is there it can be successful. Neal Miller, L.Ac., has been attending Board meetings since 1989, and believes this is the best Board he has ever seen and appreciates the evaluations by the Joint Committee and the efforts of Senator Figueroa in cleaning up the boards in general, but believes those evaluations are not based on this Board but has been based on the previous Board. Mr. Miller stated the memories are too short termed and nothing has changed since the scope of practice and that the Chair of Assembly B&P and Health Committee was opposed to AB 1943, but through the legislative process the bill was passed through all the committees so far. Mr. Miller believes it does not service California to identify an accreditation agency approved by the Federal government and outside of the standard of the California Department of Education to address the California scope of practice. And there should not be a representative from a school on the Board unless they resign from the school, and an appointed acupuncturist should not conflict with the professional associations, this would compromise the integrity of the Board. Tom Haines, Pacific College, stated that the schools are in support of the process and the process is what determines the competencies and the schools were in hopes to identify the strengths and weaknesses of the curriculum, unfortunately the results were more hourly than competencies. Mr. Haines indicated that the hours are not reflective in the scope of practice, which he thought had been stated by legal counsel at a previous Board meeting. This issue was brought back for discussion to the members of the Task Force but there remains an obvious disagreement in where the line is drawn between the curriculum in schools and practicing western medicine. The curriculum should be taught within the scope of practice

and he believes a consultant will help immensely.

Mr. Moffet indicated he supports SB 1951 and with the Board in the process of sunset review without this bill the Board automatically is sunsetted, also this bill can be amended as it progresses. Mr. Eng stated he would like to support the SB 1951 with amendments, but would like to clarify certain issues: (1) What if a faculty member of the Board should cease to serve as a faculty member or be employed by a school, which needs to be clarified; (2) Funding for an independent consultant, what is the projected cost, which should be reasonable; (3) Clarify the language in SB 1951, is the evaluation going to focus on only one national exam or accrediting body or any national bodies. Mr. Eng would support subject to amending the bill to clarify the above points. Mr. Moffet suggested supporting the bill and the concerns from the Board be relayed back to Joint Committee separately to follow up with specific recommendations for clarification of the Board's concerns. Mr. Eng stated he will vote against a support motion but if the motion fails he would make a new motion with proposed amendments. Ms. Triepke replied she would clarify Mr. Eng's three concerns: (1) Regarding the faculty member, if the acupuncturist had a suspended or revoked license or was no longer an acupuncturist they would no longer serve as a member on the Board and would have to be replaced, the same would hold true for a faculty member; (2) Regarding funding for the independent consultant, Ms. Nielsen interjected she estimates a consultant would cost between \$150,000-\$250,000. Ms. Triepke responded the Department is in the process of working on estimating the amount needed to fund this, but the funding will not come from the Department it will come from the Board, who has the money in reserves. Ms. Triepke commented, the process to expend the money will happen in legislation and she has already inquired to appropriations about the appropriate method to secure approval for funding authority. Ms. Morris interjected the consultant for the Contractors State License Board is costing between \$300,000-\$400,000. Ms. Nielsen stated the way SB 1951 is written the Department would have the discretion to select the consultant and the Board would have no control of this. Ms. Morris responded this is the way it is done and currently the Department is overseeing other similar contracts, two for enforcement monitors and one for engineers, which are all out to bid request proposals. Other boards have found the request for bid process and use of a consultant to be successful, the Dental Board currently has the same requirements. Ms. Nielsen replied funds can not be absorbed in the current budget and to use resources from the Board's reserves these funds would have to be approved, allocated for the consultant and approved by legislature. Ms. Triepke indicated that the Board has the money and we will figure out how to get the authority to spend the funds in the legislative process. Ms. Morris stated this is not any different than many other proposals that have been made by the Department's boards, you get the assignments and in order to implement that assignment you have to get the resources approved through the agencies. The Governor, Department and Legislature can approve the resources, but it not a guarantee. Ms. Morris indicated if the Board is in support, then all of the control agencies that appropriate the funds will be in line. The Board must be clear of their mission, and get their resources and carry it out. The Board has the funds in surplus and needs to work with the Senate B&P to prepare the budgeting proposals necessary to obtain the authority to expend it. The Department would support the Board's request and working through the control agencies, but could not guarantee the Board would get the funds. Ms. Nielsen wanted clarification, would there be a trailer bill language that would address the authority for these funds. If the Board waits for the 2003 BCP process it could take up to a year and a half, and her concern was for the two-year time frame that the Joint Committee has proposed. Ms. Triepke stated that she had made inquiries, but has not had a response. She suggested implementing this immediately and not waiting until January of next year and she would support it. Ms. Nielsen requested that Ms. Triepke advise the Board when she receives the response both from appropriations on the best and most expedient way to secure the necessary funds to pay for the consultant. Ms. Triepke asked if issue #1 has been clarified with the faculty members to the satisfaction of the Board members. Mr. Moffet indicated he would like to think more on this issue. Ms. Triepke discussed the issue further for clarification, that the Board member would no longer be a faculty member of a California school. Mr. Fennen commented that the faculty and Board member should not be inexperienced to hold this position and to specify having five years of experience in both fields. Ms. Triepke replied that this is relevant in her opinion. That the language was taken similar from the Dental Board bill that went through the process last year, approving faculty members. The third issue was what was the flexibility for the national exams or national body that approves the schools? Mr. Moffet responded by supporting the bill naming a specific accreditation agency and should be Federal recognized accredited agency. Ms. Triepke asked if there is another agency that would be available generally to provide the same process? Mr. Moffet acknowledged that other sources are available to be considered like Western Association of Schools and Colleges (WASC). Ms. Triepke indicated she did not have the authority to make amendments, but agrees to

provide the independent consultant with an alternative comparable source and making suggestions. Ms. Zhong-Fong had concerns if the Board does not take action in areas, what would be the outcome? Ms. Triepke responded, just as the Engineer Board the authorization would be taken away, and this would not be a problem if the Board had complied initially. She believes that this Board should do this and not make those decisions, they would be considered by an independent consultant. Ms. Triepke indicated that it's not the belief of the Joint Committee that it is any specific Board member, just the lack of not knowing what to do, resulted in the recommendation for an independent consultant. Ms. Zhong-Fong expressed her concerns that urgent matters may arise and then what course of action would the Board take? Ms. Triepke responded, if the Board is not sure and if it is in the jurisdiction of the independent consultant, ask the Joint Committee. She explained the Board would continue to perform the school approval process and will continue to have this authority in conjunction with the bureau until and if another recommendation surfaces through the process. Ms. Asplund asked what was the process to procure an independent consultant? Ms. Morris indicated that the Department works with the Board staff members to provide a scope of work, but the Department makes the final decision. Ms. Morris compared the Engineer Board's use of an independent consultant and how it was viewed as a great and neutral process and relieved the Board of the pressure to provide information and make decisions. She believes this would be of assistance to the Board because the Board has been struggling for many years, and this can provide an impartial opinion that can obtain information for making decisions. Ms. Zhong-Fong asked, then in the next 36-40 months will there be no changes on these issues? Ms. Triepke replied yes, and the scope of practice isn't clear, from now and when SB 1951 takes effect though, whatever was or was not in the scope of practice would remain the same until the independent consultant's results are released. Mr. Chang pointed out however, if potential issues would arise the Board is required to take action as in the case of the bill to increase curriculum hours. Ms. Triepke said her understanding is, relative to scope of practice, whatever it is today will be the same after SB 1951, that this does not change the scope of practice and the Joint Committee does not know what the Board's scope of practice is and because they don't know, but feel it's important, they feel it would take the Board too much time to figure it out, which is why it's being considered by an independent consultant. At this time interpret the scope of practice as the Board would today unless these reports come back and the results are different. Mr. Eng asked could the selection of the independent consultant be a cooperative venture between the Board, Joint Committee and the Department? Ms. Triepke replied the Joint Committee has done others in a similar way, but ultimately the Department makes the decision on the consultant. Mr. Eng asked what if the Board disagrees with the consultant? Ms. Morris responded that it is the purpose of an independent consultant to collect the information and present it to the Board and the Board evaluates the information and makes their own decisions based on the collected information and the Joint Committee will do likewise. Mr. Eng suggested that the Board should hold off on any approval until the June Board meeting, because this bill is so important, forward concerns and recommendations to the Joint Committee's and give SB 1951 consideration at the June meeting.

HOWARD MOFFET MOVED AND SHARI ASPLUND SECONDED TO TAKE A "SUPPORT" POSITION ON SB 1951.

AYES: HOWARD MOFFET

NOES: PEI LI ZHONG-FONG, MICHAEL ENG, SHARI ASPLUND, MIN CHANG

ABSENT: JOAN CHANG, JUSTIN TIN

MOTION FAILED

MICHAEL ENG MOVED AND MIN CHANG SECONDED TO "SUPPORT IF AMENDED," AS FOLLOWS: (1) 4934.1 (A) (3) AND (4) – SHOULD NOT NAME SPECIFIC NATIONAL ORGANIZATIONS FOR THE EXAM OR SCHOOL APPROVAL PROCESS (I.E., NCCAOM, ACAOM, BPPVE) – INSTEAD SHOULD BE GENERIC, OTHER APPROPRIATE BODY – SUCH AS "OTHER BODY/ENTITY THAT OFFERS A NATIONAL EXAM IN ACUPUNCTURE" AND/OR "THAT ACCREDITS SCHOOLS OF ACUPUNCTURE;" (2) 4934.1 – ADD NEW – THAT DEFINES WHETHER OR NOT THE BOARD CAN PROCEED ON ITEMS TO BE REVIEWED BY CONSULTANT UNDER 4934.1 (A) (1)-(4) FOR EXAMPLE: (C) 'NOTHING IN THIS SECTION SHALL PRECLUDE THE BOARD FROM REVIEWING AND/OR TAKING ACTION IN THE AREAS TO BE

ANALYZED PURSUANT TO SUBDIVISION (A) (1)-(4) OF THIS SECTION DURING THE DURATION OF THE CONTRACTOR'S REVIEW AND RECOMMENDATION."

**AYES: PEI LI ZHONG-FONG, MICHAEL ENG, SHARI ASPLUND,
MIN CHANG**

NOES: HOWARD MOFFET

ABSENT: JUSTIN TIN, JOAN CHANG

MOTION PASSED

6. Budget Report and Attorney General's Line Item

Ms. Nielsen reminded the members at the March 2002 meeting that she reported the total budget appropriation for the Attorney General's line item was expended by March 2002 and though the overall budget had some flexibility the Attorney General's billings would be monitored on a monthly basis. The April 2002 bills submitted were excessive enough to be of concern for the overall stability of the budget, therefore, effective May 1, 2002, twenty-three cases were being held and processing these cases will resume 2002/2003 fiscal year, which commences July 1. In addition, pending cases will be held at the Board office between May-June and will be forwarded to the Attorney General's office after July 1. Mr. Eng had concerns regarding consumer safety, Ms. Nielsen replied that the budget had some flexibility for unexpected costs, but not on all line items and no case is being held if public safety is a factor. Ms. Nielsen requests the Board take action to authorize the executive officer to proceed with a budget change proposal (BCP) requesting augmentation of the Attorney General's budget line authority by \$80,000. An increase in this line item will allow the Board to continue pursuing cases at the Attorney General level without having to select which cases warrant disciplinary action.

MICHAEL ENG MOVED AND HOWARD MOFFET SECONDED TO SUPPORT AUGMENTING THE 2003-2004 BUDGET BY \$80,000 FOR THE ATTORNEY GENERAL'S LINE ITEM AND AUTHORIZE THE EXECUTIVE OFFICER TO PROCEED WITH A BCP.

**AYES: PEI LI ZHONG-FONG, MICHAEL ENG, SHARI ASPLUND,
MIN CHANG, HOWARD MOFFET**

ABSENT: JUSTIN TIN, JOAN CHANG

MOTION PASSED UNANIMOUSLY

7. 2003/2004 Proposed Budget Change Proposals

Ms. Nielsen requested the Board authorize the executive officer to proceed with a budget change proposal (BCP) to request a permanent budget augmentation to fund a position at the office technician level to address an increase in workload in the enforcement program.

SHARI ASPLUND MOVED AND MIN CHANG SECONDED TO SUPPORT AUGMENTING THE 2003/2004 BUDGET BY \$61,000 AND \$53,000 ONGOING TO HIRE A FULLTIME OFFICE TECHNICIAN TO ASSIST WITH THE ENFORCEMENT PROGRAM AND AUTHORIZED THE EXECUTIVE OFFICER TO PROCEED WITH A BCP.

**AYES: PEI LI ZHONG-FONG, MICHAEL ENG, SHARI ASPLUND,
MIN CHANG, HOWARD MOFFET**

ABSENT: JUSTIN TIN, JOAN CHANG

MOTION PASSED UNANIMOUSLY

8. Competencies Task Force Committee Final Report and Recommendations -

Proposal to Amend California Code of Regulations Section 1399.436 -

Educational Curriculum Hour Requirements

Ms. Nielsen reported the Competencies Task Force concluded and April 24, 2002, the final report was filed with the Board. Ms. Zhong-Fong complimented the Task Force members for their dedication, hard work and compromises to establish final recommendations.

Public Comment: Brian Fennen stated there was a lot of hours put into the work of the Task Force, and a thorough job was done and the Board needs to accept the curriculum hours and courses. Ta Fong Chen asked the Board to

adopt the actual 3151-3945 hour ranges original proposal and not the schools 3,000-hour compromise. The compromise of 3,000 was reached in good faith and AB 1943 was amended with the same hours, but the schools are still opposing AB 1943. Neal Miller indicated he participated in all the Task Force meetings, and ranges were proposed, but the 3,000 hours was a compromise. The average schools teach 3,100 hours and the profession was being cooperative with the schools. He said that the schools threatened to walk out of the meeting if a compromise for 3,000 hours was not made and in the interest of moving forward, the compromise was made, which is reflected in the report. The motion to accept the 3000 hours was made by a representative from the schools and seconded by the profession.

HOWARD MOFFET MOVED AND MICHAEL ENG SECONDED TO ACCEPT THE COMPETENCIES TASK FORCE APRIL 24, 2002 FINAL REPORT AND CALENDAR DISCUSSION/ACTION UNTIL JUNE 24-25, 2002 BOARD MEETING IN LOS ANGELES.

AYES: PEI LI ZHONG-FONG, MICHAEL ENG, SHARI ASPLUND, MIN CHANG, HOWARD MOFFET

ABSENT: JUSTIN TIN, JOAN CHANG

MOTION PASSED UNANIMOUSLY

9. Legislative Status Report

a. Board's 2002 Legislative Proposals, amending B&P Code Sections 4935, 4938.2, 4955, 4955.1, 4955.2, 4960.5, and 4977.2

Ms. Nielsen reported that the amended proposals have been submitted to the legislature. Ms. Triepke stated that two of the suggestions would not be accepted, which are sections 4937 and 4938.2. She will get back to the Board regarding to the amendments.

b. AB 1943 (Chu) - amends B & P Code Section 4939 and adds Section 4965.5

Michael Eng recused himself from discussion/vote. Ms. Asplund explained she was willing and wanting to work with the Joint Committee, but she has been on the Board for a long time and AB 1943 addresses improving education standards, which is what the Board has wanted to do all along. She feels that Board support of this bill does not indicate that the Board will not work with the Joint Committee.

Public Comment: Neal Miller stated he spoke with Assemblywoman Chu, and that the Acupuncture Board will determine the breakdown of curriculum hours in regulation. Ronald Aranjo, District staff for Assemblywoman Judy Chu, stated this bill is scheduled for Assembly Appropriation Committee for May 22, and then will be forwarded to the full Assembly for a vote. Brian Fennen stated that if the bill goes through, the bill would set the 3,000 hours in legislation and sets the continuing education hours to 450 for licensees. Neal Miller indicated this bill has been said to be in conflict with the Joint Committee review process, however AB1943 was introduced before SB 1951. Through the legislative process it was thought that this bill had merit and was passed regardless of Joint Committee's opposing opinion. Michael Devitt Managing Editor of Acupuncture Today, stated that the professional associations are in support of the bill. Kuk Yul Choi, AKOMAC, questioned the reasoning for compromising the increase in the hours.

HOWARD MOFFET MOVED TO OPPOSE AB 1943, AS IT WAS IN CONFLICT WITH SB 1951.

MOTION FAILED DUE TO LACK OF SECOND.

SHARI ASPLUND MOVED AND MIN CHANG SECONDED THE BOARD TAKE A "SUPPORT POSITION" ON AB 1943.

AYES: PEI LI ZHONG-FONG, SHARI ASPLUND, MIN CHANG

NOES: HOWARD MOFFET

RECUSED: MICHAEL ENG

ABSENT: JUSTIN TIN, JOAN CHANG

MOTION PASSED

c. AB 2314 (Chu) – amends Health & Safety Code, Division 104

Ms. Nielsen reported AB 2314 originally established certification procedures for traditional Asian herbal medicine products, however, the bill was converted from a herbal bill to a nursing education bill, therefore it would be appropriate to withdrawal the Board's support position taken at the March 2002 meeting.

SHARI ASPLUND MOVED AND HOWARD MOFFET SECONDED TO WITHDRAW THE SUPPORT POSITION ON AB 2314.

AYES: PEI LI ZHONG-FONG, SHARI ASPLUND, MIN CHANG, HOWARD MOFFET

NOES: NONE

RECUSED: MICHAEL ENG

ABSENT: JUSTIN TIN, JOAN CHANG

MOTION PASSED

d. AB 2634 (J.Campbell) – Governor Appointments

SHARI ASPLUND MOVED AND MIN CHANG SECEONDED TO TAKE A WATCH POSITION ON AB 2634.

AYES: PEI LI ZHONG-FONG, SHARI ASPLUND, MIN CHANG MICHAEL ENG, HOWARD MOFFET

ABSENT: JUSTIN TIN, JOAN CHANG

MOTION PASSED UNANIMOUSLY

e. SB 1244 (Figueroa) – Governor Appointments to Consumer Boards

SHARI ASPLUND MOVED AND MICHAEL ENG SECONDED TO TAKE A WATCH POSITION ON AB 1244.

AYES: PEI LI ZHONG-FONG, SHARI ASPLUND, MIN CHANG MICHAEL ENG, HOWARD MOFFET

ABSENT: JUSTIN TIN, JOAN CHANG

MOTION PASSED UNANIMOUSLY

f. SB 2659 (Figueroa) – Disclosure of Licensee Information

MICHAEL ENG MOVED AND HOWARD MOFFET SECONDED TO TAKE A SUPPORT POSITION ON SB 2659.

AYES: PEI LI ZHONG-FONG, SHARI ASPLUND, MIN CHANG MICHAEL ENG, HOWARD MOFFET

ABSENT: JUSTIN TIN, JOAN CHANG

MOTION PASSED UNANIMOUSLY

10. Public Comment Period:

Neal Miller requested the Board to address the Speier bill addressing herbs and related issues such as ephedra be placed on the agenda for the next Board meeting because of the change in the public awareness oriental medicine and the safety concerns to protect and inform the consumer. Mr. Fennen stated that this is the 3rd version of the bill and that Susan Davis opposed it and got it amended a few years ago, then Jackie Speier reintroduced it as SB 397. Last year it was vetoed by the Governor, but it still had the amendment to exempt acupuncturist and this would be problematic for those who use these herbs to label the ingredients of ephedra or mixed the herbs in their office. At the time, did not realize when the bill was introduced as it did not include this in this bill and the profession is currently requesting an exemption for the profession.

11. Adjournment: 5:00 p.m.